IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b))

Description of Case

W.P. No. 591 of (M/S) 2003, decided on 11.07.2003

Rajendra Prasad ---------- Petitioner

Versus

State of Uttaranchal & others ----- Respondents

A.F.R. (Approved for reporting)
~~Not approved for repo~~rting

Date 11-07-2003 Initials of Judge

Note – Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Court No.6

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.591 OF 2003 (M/S)

CIVIL SIDE

Rajendra Prasad ..... PETITIONER

Versus

State of Uttaranchal ..... RESPONDENTS

Hon'ble Rajesh Tandon J.

Heard Sri K.S. Verma for the petitioner and Sri Nanak Chand Gupta, Standing Counsel for the respondents.

The present writ petition under Article 226 of Constitution of India has been filed by the petitioner inter alia challenging the judgment and order dated 23.9.2002 and 10.4.2003 passed by the Collector, Hardwar as well as by the Naib Tehsildar, Lakshar, District Hardwar who have been impleaded as respondent no.2 and 3 respectively.

The facts leading to the present writ petition are that one Govind Sahai son of Chiranji Lal was the owner of Khasara no.1'31 /32 situated in Mauja Laksari Paragna Manglaur Tehsil Laksar, District Hardwar. It was alleged by the petitioner that on 1.6.1959 Govind Sahay executed a will in favour of Lekhraj father of the petitioner. Lekhraj died on 11.1.1991 and the land in question was mutated in favour of the petitioner and his three brothers. On 20.12.2000 order was passed regarding mutation by the Naib Tehsildar in the proceedings of case No.416 of 1999 under the privisions of section 34/35 of U.P. Land Revenue Act. One Bhartu respondent no.4 on 17.7.2001 has moved a restoration application as well as for setting aside the order dated 20.12.2000 supported by an application under section 5 of Limitation Act, for condonation of delay in filing the application. On 30.9.2002

order dated 20.12.2002 was set aside. Against the said order a revision was filed and the same was dismissed on 10.4.2003 by the Collector, Hardwar.

I have heard Sri K.S. Verma for the petitioner and the learned Standing Counsel for the respondent. Sri K.S. Verma, vehemently argued that once the order dated 20.12.2000 has achieved finality, it was not open for the Naib Tehsildar, respondent no.3 to re-open the entire issue by allowing the application for restoration. He has also urged that mutation proceedings was in accordance with paragraph 372 to 377 of Revenue Court Manual and while passing order for mutation Naib Tehsildar should have followed the procedure prescribed under the Revenue Court Manual.

On the other hand the learned Standing counsel has argued that the impugned order cannot be interfered in writ jurisdiction as authorities concerned have only allowed the restoration application which was duly supported by an application under section 5 of Limitation Act.

A perusal of the order passed by the Naib Tehsildar shows while allowing the restoration application he invited objections to be filed on 17.8.1999 and while passing order on 20.12.2000 no prior notice was issued to the respondent no.4. The Naib Tehsildar has recorded a finding that in fact the order dated 20.12.2000 was an ex parte order and as such he allowed restoration application dated 16.7.2001.

The revisional court has also come to the conclusion that application for restoration was duly supported by the application under section 5 of Limitation Act. The revisional court was also of the opinion that since opportunities are given to both the parties to contest the case on merits, therefore, no interference can be called ofr in revisional jurisiction.

It has been held in case of State of Haryana vs. Chandra Mani and others, JT 1996 (3) S.C. 371 the expression 'sufficient cause' has been interpreted as under:

"The expression "sufficient cause" should, therefore, be considered with pragmatism in justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit."

Similar view has been taken in 1987 SCC Vol. II 107.

In my opinion since substantial justice has been done by restoring mutation proceedings, no predjudice has been caused to the petitioner. The Naib Tehsildar has given elaborate reasons for restoring the case and the revisional court has confirmed the findings on the principle of substantial justice between the parties. No interference can be called under Article 226 of Constitutions of India. I have no reason to interfere in the concurrent findings of both the courts below. The writ petition is, therefore, dismissed.

At the end Sri K.S. Verma learned counsel for the petitioner prayed that there should not be any delay in the disposal of mutation proceedings and as such a direction be given to the Naib Tehsildar to expedite disposal of mutation proceedings. It may be pointed out that mutation proceedings were initiated under section 34/35 of Land Revenue Act, as back as in the year 1999. Petitioner will appear before the Naib Tehsildar, Lakshar along with certified copy of this order in the 1st week of August 2003 who shall decide the mutation proceedings within two months from the date of receipt of certified copy of this order.

With the above observations the writ petition is dismissed.

(Rajesh Tandon J.)

11.07.2003
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